

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

COSMOS GRANITE (WEST), LLC, a  
Washington limited liability company,

Plaintiff,

v.

MINAGREX CORPORATION, d/b/a MGX  
Stone,

Defendant.

Case No. C19-1697RSM

ORDER GRANTING MOTION FOR  
EXTENSION OF CERTAIN DEADLINES

The Court recently denied Plaintiff's request to extend deadlines by nine months in this case. Dkt. #42. The Court's last words to the parties were "the Court expects the parties to work together and submit a stipulated motion" seeking a short extension of time if necessary. Sadly, such has not happened. This matter comes before the Court on Defendant Minagrex Corporation's Motion to continuing the trial date other deadlines by three months. Dkt. #44. Even though Plaintiff Cosmos Granite (West), LLC originally sought an extension, it now opposes this Motion. Dkt. #54.

The parties previously agreed to two extensions in this case due to the Covid-19 pandemic. The instant request is not related to COVID-19. Defendant Minagrex provides the following reasons for the request:

...after this Court denied Cosmos's continuance request on December 10, 2020, Cosmos suddenly produced an expert opinion report that dramatically enlarged its categories of claimed

1 damages.... Soon thereafter, Cosmos also began a slew of  
2 discovery productions that now number in the thousands of pages.

3 The eleventh-hour expansion of Cosmos's claimed damages—  
4 which Cosmos disclosed just one month prior to the January 15,  
5 2021 discovery motion cut-off date—upends nearly a year's worth  
6 of negotiated discovery parameters, and renders indisputably  
7 relevant discoverable material that Cosmos has long failed, or  
8 refused, to provide. Moreover, Minagrex cannot digest and revise  
9 its discovery needs in response to Cosmos's sudden change in  
10 damages theory before the January 15th deadline for discovery  
11 motions, nor can it obtain comprehensive expert rebuttal opinion of  
12 the newly disclosed expert report by the applicable deadline, which  
13 is also January 15th.

14 Dkt. #48 at 1–2. In a nutshell, Minagrex claims that Cosmos recently revealed through an  
15 expert report that it is pursuing loss of business relationship damages that it had previously  
16 “disavowed,” and that it has refused to provide discovery on. *See* Dkt. #48 at 11.

17 Both parties set forth substantial irrelevant facts, pointing fingers at each other and  
18 generally ignoring the relevant factors for granting or denying the requested relief. The Court  
19 is not being asked to compel discovery or to issue discovery sanctions.

20 Trial is currently set for June 14, 2021. Dkt. #32. Expert witness disclosures were due  
21 on December 16, 2020; Discovery is due on February 15, 2021. *Id.* Defendant is seeking to  
22 continue trial to October 12, 2021, and to continue all deadlines by 180 days. Dkt. #48 at 1.

23 A scheduling order “may be modified only for good cause and with the judge’s  
24 consent.” Fed. R. Civ. P. 16(b)(4). The decision to modify a scheduling order is within the  
25 broad discretion of the district court. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604,  
26 607 (9th Cir. 1992). “Rule 16(b)’s ‘good cause’ standard primarily considers the diligence of  
27 the party seeking amendment.” *Id.* at 609. If a party has acted diligently yet still cannot  
28 reasonably meet the scheduling deadlines, the court may allow modification of the schedule.  
*Id.* However, “if that party was not diligent, the inquiry should end” and the motion to modify

1 should not be granted. *Id.* “Mere failure to complete discovery within the time allowed does  
 2 not constitute good cause for an extension or continuance.” LCR 16(b)(5). Local Civil Rule  
 3 16(m) states that “this rule will be strictly enforced” in order to “accomplish effective pretrial  
 4 procedures and avoid wasting the time of the parties, counsel, and the court.”

5 Defendant has the burden to demonstrate its diligence in pursuing discovery. This is the  
 6 Court’s main concern. The reasons Defendant has presented for its inability to complete  
 7 discovery by February do not tend toward “mere failure to complete discovery within the time  
 8 allowed,” or speculation about potential future issues with discovery, as was the problem  
 9 before, but rather tend toward a good faith attempt to respond to an expansion of discoverable  
 10 issues at the end of discovery. The back and forth communications presented to the Court  
 11 appear to create genuine confusion about what damages were being pursued by Plaintiff. *See*  
 12 Dkt. #60 at 3–4. The amount of the request—three months—is not excessive. Plaintiff was  
 13 just last month asking for more time to prepare for this case, which it can now have.  
 14

15  
 16 Given all of the above, and having reviewed the relevant briefing, attached declarations,  
 17 and the remainder of the record, the Court hereby finds and ORDERS that Defendant Minagrex  
 18 Corporation’s Motion seeking to modify the Court’s Scheduling Order, Dkt. #44, is  
 19 GRANTED. Trial will be set for October 12, 2021. The Court directs the Clerk to issue a new  
 20 scheduling order, adjusting all non-expired deadlines to this trial date. The Court urges the  
 21 parties and their counsel to use this time to resolve discovery issues outside of Court.  
 22

23  
 24 DATED this 15<sup>th</sup> day of January, 2021.

25  
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27 RICARDO S. MARTINEZ  
 28 CHIEF UNITED STATES DISTRICT JUDGE